

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 77 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

-----  
DIWALIBEN A.K.A. BABLIBEN DAUGHTER OF DESAIBHAI PATEL

Versus

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR

-----  
Appearance:

MR MIHIR H JOSHI for Petitioner

MR S.P. DAVE, LD.GOVT. PLEADER FOR Respondent.

-----  
CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 03/02/97

ORAL JUDGEMENT

The petitioner had presented the necessary Scheme under Section 21 of the Urban Land (Ceiling & Regulation) Act, 1976. This Scheme as presented by the petitioner came to be sanctioned under the orders dated September 05, 1980, available at Annexure-A. Condition No.1 happens to be to the effect that the Progress Report

shall have to be submitted at the interval of every six months, but any how the entire Scheme should be completed within a period of five years from the date of the sanction. This condition therefore would mean that the Scheme was to be completed within a period of five years with effect from September 05, 1980. The construction could not progress ahead and the Scheme could not be completed within the stipulated time frame. In view of this fact situation, the orders dated March 18, 1986 Annexure-E came to be pronounced by the Competent Authority, saying that, as the Scheme has not been completed within the stipulated time frame, it requires the cancellation. These orders were taken before the Tribunal by filing the appeal No. Appeal-UL-Ahmedabad-93/86. The Addl. Urban Lands Tribunal was of the opinion that, the appeal was required to be partly allowed and the orders of cancellation of the Scheme were required to be set aside and the matter was required to be remanded to the Competent Authority to reconsider the petitioner's Scheme. In view of the observations made by the Tribunal during the course of the orders, the grievance of the petitioner now is that the remanded proceedings are not being completed by the Competent Authority, and that, on more than one occasion the oral view has been expressed by the Competent Authority saying that as the Scheme has not been completed during the stipulated time frame, a fresh Scheme could not be considered. This is the stage at which the petitioner is before me.

It is indeed true that the proceedings came to be remanded to the Competent Authority by the Ld. Addl. Tribunal, ULC, under the orders dated August 31, 1988, but still the matter has not progressed before the Competent Authority. There could be the expression of the oral opinion by the Competent Authority that as the Scheme has not been completed within the time frame a fresh Scheme could not be considered.

The reference is being made by learned counsel for the petitioner Mr. Mihir Joshi on a decision of this Court in Suvarnaben wd/o Thakorlal Gordhandas and Anr. Petitioners, Vs. The Competent Authority & Addl. Collector (ULC) and Anr. Respondents, 1995(2)G L H, pg. 417. This decision while considering the condition no.3 in the sectioned Scheme before the Court which is in respect of the stipulated time frame says that, the time frame direction is merely directory and not mandatory. Regard being had to this decision on which learned counsel for the petitioner places reliance, it is abundantly clear that the time frame condition can not be

regarded as a mandatory one but must be accepted as directory in nature. This is the settled legal position and it appears that, the Competent Authority is not justified in not deciding the matter on the basis of the above said pronouncement on which learned counsel for the petitioner places reliance.

It is therefore hereby ordered and directed that the Competent Authority shall decide the remanded proceedings as expeditiously as possible, and at any rate within a period of four months from the date of receipt of writ of the present orders. It shall be open for the petitioner to press in service the aforementioned decision in case of Suvarnaben wd/o Thakorlal Gordhandas and Anr. (*supra*) for the consideration of the Tribunal. If that is done, the same shall be taken into consideration and the matter shall have to be decided on merits and in accordance with law. Rule is made absolute to the above said extent only, with no order as to cost.

-----